

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3908 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHANKERLAL NAGARDAS PATEL

Versus

TALUKA DEVELOPMENT OFFICER, VIRAMGAM & ANR.  
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Appearance:

Mr. P.R. Joshi for Petitioner  
Mr. N.N. Pandya for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a primary school teacher in village Dalod, Taluka Viramgam, Dist. Ahmedabad, by filing this Special Civil Application before this Court, challenged therein the legality of the order dated 19th July 1984, annexure

`A', of Taluka Development Officer, under which his pay was reduced from Rs.560/- to Rs.540/- from 1.1.1984.

2. The petitioner was given selection grade from 1.1.1974 and he continued to enjoy this selection grade till the order dated 19th July 1984 has been made. The petitioner's pay has been reduced from 1.1.1984 on the ground that he was reverted from 1.1.1975 and as such he was not entitled to get selection grade from 1.1.1974 and his entitlement in the said scale will be from 1.1.1984.

3. The learned counsel for the petitioner made twofold contentions in this Special Civil Application. Firstly, he has contended that the order dated 19th July 1984 has been made by the respondent without giving any notice or opportunity of hearing to the petitioner. This order has caused serious civil consequences as the pay of the petitioner has been reduced and as such, it is an order which has caused prejudice to the petitioner, and the same should have been passed after following principles of natural justice. The counsel for the petitioner contended that even if it is an administrative order but if it results in civil consequences, i.e. reduction of pay, then principle of natural justice has to be followed by respondent before making such prejudiced order against the petitioner. It has next been contended that the recovery could not have been ordered nor it could have been effected. It is not a case where the petitioner, by making some concealment of fact or playing some fraud, has got the order of selection grade from 1.1.1974. Whatever has been paid to the petitioner for all these years has been paid in pursuance of the order passed by respondents. On the other hand, the learned counsel for the respondents has supported the order. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

4. The second contention of the learned counsel for the petitioner is wholly devoid of any substance. The order dated 19th July 1984 nowhere says that whatever amount has been paid to the petitioner of the selection grade from 1.1.1974 has to be recovered from him. The order is plain and simple in language and it only gives out one reading that the pay of the petitioner has been reduced from 1.1.1984 without any further consequences. The counsel for the petitioner has not produced any other document on record under which the concerned authority has ordered for recovery of excess amount paid to the petitioner during all these years. In view of this fact, the second contention of learned counsel for the

petitioner is devoid of any substance.

5. The order dated 19th July 1984 reduces the pay of the petitioner from Rs.560/- to Rs.540/-. It has certainly resulted in civil consequences, i.e. reduction of pay of the petitioner. It is a prejudiced order which causes monetary loss to the petitioner not only during his service, but also it may effect his pension and other retirementary benefits. The Apex Court in the case of The Scheduled Caste and Weaker Section Welfare Association (Regd.) and anr. v. State of Karnataka and ors., reported in AIR 1991 SC 1117, held that administrative order, if effects rights of a citizen, principles of natural justice to be complied with. Now there remains a thin line in between administrative order and quasi-judicial order. A reference in this respect may have to be to the decision of Apex Court in the case of A.K. Kraipak and ors. v. Union of India and ors., reported in AIR 1970 SC 150. The order dated 19th July 1984 has certainly resulted in monetary loss to the petitioner. His basic pay has been reduced which will certainly result in further reduction in the allowances payable to an employee on the basic pay.

6. A reply to this Special Civil Application has not been filed by respondents and the averments made in this Special Civil Application that the said order has been passed in violation of principles of natural justice, go uncontroverted. The counsel for the respondent also otherwise could not produce on record any material before this Court to show and establish that the order dated 19th July 1984 has been passed after giving a notice and an opportunity of personal hearing to the petitioner.

7. In the result, this Special Civil Application succeeds and the same is allowed. However, acceptance of this writ petition will not come in way of respondents to pass fresh order after giving notice and opportunity of hearing to the petitioner. Merely because the order has been passed in violation of principles of natural justice, the petitioner will ipso-facto not be entitled for all other reliefs. It is a case where a low paid employee has been unnecessarily constrained to approach this Court by way of this Special Civil Application, by the respondents. The petitioner would have incurred costs of this litigation. It is a case where the impugned order has been found to be illegal and as such the petitioner should be awarded the costs of this litigation. The respondent No.1 is directed to pay Rs.1,000/- by way of costs of this Special Civil Application, to the petitioner. Rule is made absolute.

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(sunil)